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6 **IN THE UNITED STATES DISTRICT COURT**
7 **FOR THE DISTRICT OF ARIZONA**
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9 John Doe,

10 Plaintiff,

11 v.

12 Paul Penzone,

13 Defendant.
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No. CV-23-01938-PHX-SMM

ORDER

15 This matter is before the Court on Defendant Sheriff Penzone's Notice Asserting
16 His Status as a Nominal/Relief Defendant. (Doc. 13). Defendant Penzone asserts his
17 status as a nominal or relief Defendant in this action and asserts that he will not file an
18 answer to Plaintiff's Complaint, (Doc. 1), unless so ordered by the Court. Defendant
19 Penzone has provided no legal basis for his assertion that he is a nominal or relief
20 Defendant or why this would exempt him from filing a responsive pleading in accordance
21 with Rule 12 of the Federal Rules of Civil Procedure.

22 Defendant Penzone asserts that he was not involved in the passage of the Arizona
23 statutes that Plaintiff alleges are unconstitutional. However, Plaintiff has not alleged that
24 Defendant Penzone was involved in such and does not need to. Plaintiff brings a federal
25 constitutional claim for relief against Defendant Penzone because Penzone is involved in
26 enforcing the allegedly unconstitutional state statutes in Penzone's official capacity. See
27 Ex parte Young, 209 U.S. 123, 157 (1908) ("In making an officer of the state a party
28 defendant in a suit to enjoin the enforcement of an act alleged to be unconstitutional . . .

1 such officer must have some connection with the enforcement of the act”); see also
2 Buffin v. California, 23 F.4th 951, 962–63 (9th Cir. 2022) (holding that county sheriff
3 acted as state official against whom 42 U.S.C. § 1983 action could be brought).

4 Because Defendant Penzone has shown no legal basis for his status as a nominal
5 or relief Defendant, the Court orders Defendant Penzone to respond to Plaintiff’s
6 Complaint. (Doc. 1).

7 Accordingly,

8 **IT IS ORDERED** that Defendant Penzone must answer the Complaint or
9 otherwise respond by appropriate motion by December 22, 2023.

10 Dated this 6th day of December, 2023.

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13 Honorable Stephen M. McNamee
14 Senior United States District Judge
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